

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

April Guilder,

Plaintiff,

v.

Delanor, Kemper & Associates, LLC,

Defendant.

Case No. 8:10-cv-844-DNH-DRH

**MOTION TO ENFORCE SETTLEMENT
AGREEMENT**

Now comes Plaintiff April Guilder (“Plaintiff”), by and through counsel, and respectfully requests this Honorable Court to enforce a settlement agreement between the parties by entering a Judgment against Defendant Delanor, Kemper & Associates, LLC. In support hereof, Plaintiff states as follows:

1. A district court has the inherent authority to enforce a settlement agreement reached in a case currently pending before it. Sorensen v. Consolidated Rail Corp., 992 F.Supp. 146, 149 (N.D.N.Y.1998), *citing* Cruz v. Korean Air Lines Co., Ltd., 838 F.Supp. 843, 845-46 (S.D.N.Y.1993).
2. Upon a motion to enforce such a settlement agreement, the court should enter a judgment enforcing the agreement if it finds that the parties did in fact reach a binding settlement agreement. *See e.g., Omega Engineering, Inc. v. Omega, S.A.*, 432 F.3d 437 (2nd Cir. 2005).
3. The parties in this action executed a Settlement Agreement and General Release by Plaintiff’s signature on September 13, 2010 and the signature of Defendant’s President on October 25, 2010. *See Exhibit A pg 3.*

4. The agreement required Defendant to deliver to Plaintiff's attorneys a check for \$2,125.00 no later than October 8, 2010 and a second check for \$2,125.00 no later than November 8, 2010, for a total of \$4,250.00. Id at pg 1.
5. Defendant tendered the first check in the amount of \$2,125.00 to Plaintiff's attorneys on October 27, 2010, which was 19 days late. *See Affidavit of Timothy Sostrin*.
6. The second check for \$2,125.00 is now also past due and has yet to be delivered. Id.
7. Plaintiff's counsel has made repeated demands for payment but to no avail. *See Exhibit B*.
8. Plaintiff has incurred \$1,625.00 in reasonable attorney's fees in seeking to enforce the settlement agreement. *See Id*.
9. The settlement agreement provides that a party who files a successful action to enforce the agreement is entitled to recover attorney's fees and costs. *See Exhibit A pg 3*.
10. As such, Defendant's obligation to Plaintiff is now \$3,750.00, which is comprised of the remaining settlement funds (\$2,125.00) plus reasonable attorney's fees of \$1,625.00 incurred in enforcement.

WHEREFORE, Plaintiff respectfully requests this Honorable Court to enter judgment against Defendant Delanor, Kemper & Associates, LLC and in favor of Plaintiff April Guilder in the total amount of \$3,750.00

RESPECTFULLY SUBMITTED,

By: /s/ Roger J. Yehl

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CERTIFICATE OF SERVICE

I hereby certify that on November 24, 2010, my firm served Defendant with a copy of the foregoing Motion and attachments by placing a copy of the same in the United States Mail, addressed as follows:

Delanor, Kemper & Associates, LLC
c/o George Thorpe, Registered Agent
1878 Canmont Drive
Atlanta, GA 30319

/s/ Roger J. Yehl